R. I., 411, is one of the few which cannot be easily distinguished as containing other elements which affected the decision, and even in that case, there is some implication of corporate negligence on the part of the association in its selection of servants. And immediately after the decision in that case, the Rhode Island legislature expressed its disapproval and distrust of the doctrine by passing a statute relieving charitable corporations of such liability. So it is concluded that *Taylor v. Protestant Hospital Association, supra,* was decided according to the weight of authority and in harmony with common sense and popular ideas of justice.

EX-OFFICIO POWERS OF THE PRESIDENT OF A PRIVATE CORPORATION.

The authorities are not uniform as to the powers possessed by the president of a private corporation, merely by virtue of his office.

In the recent case of *Murchison Nat. Bank v. Dunn Oil Mills Co.,* 73 S. E., 93 (N. C.), (omitting facts not involved in the question under consideration), the plaintiff brought an action on a promissory note signed by the president of the defendant corporation. The contention of the defendant was that the president was not authorized to sign the note, and since no such authority existed by virtue of his office, the company was not bound by his act. The court held that the president was *ex vi termini* its general agent, and that all his acts are presumed to have been within his authority unless the contrary appears.

It is a well recognized and uncontradicted principle of the law of private corporations that a corporation has the implied power to borrow money for legitimate corporate purposes. This power may be exercised by the general manager of a corporation, when entrusted with the entire control of its business. *Matson v. Alley,* 141 Ill., 284.

Some of the courts, in sustaining the doctrine of the principal case, hold that the president of a corporation, since he is usually given the general control of the affairs of the company, is presumed to have authority to execute promissary notes in the name of the corporation. *Consolidated Perfume Co. v. Nat. Bank of Republic,* 86 Ill. App., 642. The burden is upon the corpora-

tion of showing that the acts of its president were not authorized. If the act of the officer is within the scope of the corporate business, it is presumed to be within the officer's authority. *Patterson v. Robinson,* 116 N. Y., 193.

Instead of placing the authority upon the assumption of a grant of the entire management of the corporation to its president, some courts would appear to imply the power to contract, merely *virtute officii.* In the absence of by-laws or legislative enactments, corporations act through their president and those representing him. Therefore, when an act pertaining to the business of the company is performed by him, it will be presumed that the act was legally done and binding upon the corporation. *Smith v. Smith,* 62 Ill., 493.

The courts repudiating the doctrine of the principal case base their decisions upon the fact that it is the directors and not the president who wield the powers of the corporation when the same are not vested in the stockholders or members collectively. The president is a mere agent, and, like other agents, must derive his authority by delegation from the board of directors. "The mere fact that he is president, without more, does not imply that he has any greater power than any other director." *Marshall on Corporations,* 961. It is therefore held that one who seeks to hold a corporation on a contract executed by its president must show that he has such authority. He has no inherent authority by virtue of his office to execute a negotiable note which will bind the corporation. *Third Nat. Bank v. Mercantile Mfg. Co.,* 56 W. Va., 446. As regards the inherent powers of a corporation, *Morawitz on Corporations,* Sec. 537, states: "It seems that a president has no greater power by virtue of his office merely than any other director of the company, except that he is the president of the board."

It is well recognized, however, that a corporation may be estopped to deny the authority of its president by clothing him with apparent authority to act for it in making contracts, as where the corporation has acquiesced in the exercise of powers not by virtue of his office conferred upon him. *Chambers v. Lancaster,* 160 N. Y., 342. The directors may expressly authorize the president to do a particular act, or he may be given the general

management of the corporation. And the fact that he is president creates no limitation on his powers as general manager. *Geeder v. H. M. Loud & Sons Lbr. Co.,* 86 Mich., 541. If he is intrusted with the entire management of the company's business, it is not a delegation of corporate rights and powers, but is merely the authority to perform for and in the name of the corporation the business it is authorized to transact. *Jones v. Williams,* 130 Mo., 1.

As regards the question of notice to a person dealing with an officer of a corporation, it has been held that a person taking a note from the president of a corporation is bound to inquire into the regularity of such note. *Wilson v. Metropolitan R. R. Co.,* 120 N. Y., 145.

It is not infrequently the case that the courts in applying the doctrine of the principal case construe the inherent powers of the president of a corporation to be the same as those of the cashier of a bank. Therefore in sustaining their position that the president of a corporation is by virtue of his office managing agent of its business they cite cases in which the contract is one which has been executed by the cashier of a bank. However, a distinction should be drawn between these two officers. The cashier of a bank has greater inherent powers than any other corporate authority, excepting directors. *Coats v. Donnell,* 94 N. Y., 168. "By custom the cashier of a bank is the general agent of the bank, and has charge as general managing officer of all its ordinary business. He has the power to borrow money when necessary in the usual course of business." *Marshall on Corporations,* 967.

It has been held in a number of cases that although the president of the corporation is general manager, if he is not intrusted with the entire management of the business, he has no power to execute promissory notes. *Railway Equipment & Pub. Co. v. Lincoln Nat. Bank,* 82 Hun., 8.

According to the weight of authority, the president of a private corporation has no power whatever to bind the corporation as its agent unless that power is specially conferred by the board of directors or stockholders. This doctrine, which is directly opposed to that of the principal case, is undoubtedly more in consonance with justice to the stockholders, who should not be

required to suffer loss through the unauthorized and nefarious acts of agents.

WHEN THE SENDING OF A SUNDAY TELEGRAM IS A WORK OF NECESSITY.

In the recent case of *W. U. Tel. Co. v. Fulling,* 96 N. E. Rep., 967 (Ind.), the question was presented to the Court whether or not a telegraph message from a husband to his wife, telling her that late trains prevented him from returning home until the following morning, was a work of necessity within the exception of the statute prohibiting any work on Sunday, save that of charity or necessity. It was held that its tranquil effect on the mind of an anxious wife for the unexplained delay of her husband's arrival would be apparent to the ordinary mind; that this reason was of itself sufficient to prompt a considerate husband in sending the telegram; and that even if this was the only purpose for which it was sent that a necessity was shown which would bring it within the statutory exception.

The Massachusetts Court has said that any labor, business or work which is morally fit and proper to be done on the Lord's day, under the particular circumstances, is a work of necessity within the statute; and that it does not have to be a mere physical or absolute necessity to come within the definition. *Flagg v. Millbury,* 4 Cush., 243. And in a later case, *Doyle v. Lynn & B. R. R. Co.,* 118 Mass., 195, the same court says that the word "charity", used in the Snuday Law, which prohibits work and labor on Sunday, except work of necessity or charity, includes whatever proceeds from a sense of moral duty, or a feeling of kindness and humanity, and is intended wholly for the purpose of relief or comfort of another, and is not for one's own benefit or pleasure. In *Lawton v. Rivers,* 13 Amer. Rec., 741 (N. C.), the Court says that the word "necessity" is an elastic term; that it does not mean that which is indispensable, but still, on the other hand, that it does mean something more than that which is merely needful or desirable. And the Michigan Court lays down the rule that mere convenience of time or opportunity cannot be a test as to whether or not work done on Sunday is a work of necessity. *Allen v. Duffie,* 43 Mich., 1.